

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

First Civil Appeal No.S-05 of 2022

Appellant: Prof: Dr. Kheo Ram
Through Mr.Ghayoor Abbas Shahani, Advocate

Respondents: M/S Changan Mehran Motors Ltd. & another
Through Mr.Waqar Ahmed Chandio, Advocate

Dated of hearing: 01.11.2024

Date of decision: 07.11.2024

J U D G M E N T

ARBAB ALI HAKRO, J.- Through this Appeal under Section 34 of the Sindh Consumer Protection Act, 2014 (the "**Act of 2014**"), the Complainant (Appellant herein) has impugned Order dated 19.9.2022, passed by Presiding Officer Consumer Protection Court, Larkana ("**the Consumer Court**"), in Complaint No.04 of 2022, whereby the Complaint filed by the appellant was rejected under Order VII Rule 11 C.P.C.

2. The brief facts of the case are that on 06.04.2022, the appellant booked an ALSVIN 1.37L MT COMFORT (**vehicle**) with Respondent No.2 and paid an amount of Rs.25,39,000/- through Pay Order dated 04.05.2022. Upon making the full payment, Respondent No.2 issued an Order Form to him, tentatively indicating July 2022 as the delivery month. In the first week of July 2022, when the appellant contacted Respondent No.2 for the vehicle's delivery, he was asked to wait for a week. Despite repeated approaches, Respondent No.2 failed to deliver the vehicle within the stipulated period. Subsequently, they demanded an additional Rs.200,000/- as illegal charges, which the appellant refused to pay, leading Respondent No.2 to demand new rates. Finally, on 15.08.2022, the appellant served a legal notice to the Respondents. Despite this, the Respondent did not address his grievance and instead sent an evasive reply, prompting the appellant to file a complaint.

3. Upon presentation of the Complaint, the Consumer Court, after hearing the learned counsel for the Appellant/consumer, rejected the Complaint as being time-barred through the impugned Order.

4. At the outset, learned counsel for the appellant contended that the appellant's Complaint was within the statutory timeframe. Upon the accrual of the cause of action, the appellant duly dispatched a legal notice to the respondents on 15.08.2022, in compliance with the mandatory requirements under Section 29(1) of the Act of 2014. The respondents provided their replies on 24.08.2022 and subsequently on 15.09.2022, thereby confirming that the Complaint was filed within the prescribed 30-day period. Further, it was argued that the Consumer Court failed to consider the respondents' mala fides, as they willfully and deliberately delayed the delivery of the vehicle to the appellant. Lastly, it was submitted that the impugned Order may be set aside and the appellant's Complaint may be remanded to the Consumer Court for adjudication on its merits. In support of these contentions, reliance was placed on case law **PLD 2012 S.C-247 and PLD 2017 S.C-1**.

5. Conversely, learned counsel for the Respondents argued that the cause of action accrued to the Appellant in July 2022, as this was the month designated for the delivery of the vehicle. The appellant, however, filed a Complaint on 15.09.2022, which was consequently time-barred. Therefore, the Consumer Court rightly rejected the Complaint. In support of his contentions, the counsel relied on case law reported as **2023 CLD 934, PLD 2023 S.C-482, and PLD 2014 Lahore-196**.

6. I have meticulously considered the arguments proffered by the learned counsel for both parties and have assiduously scrutinized the material available on record, including the case law adduced at the bar.

7. Upon scrupulous examination of the impugned Order, it becomes manifest that the Consumer Court rejected the Complaint while purporting to exercise its powers under Order VII Rule 11 C.P.C. This action is impermissible in law, given that the matter before the Consumer Court was a complaint and not a plaint in terms of Order VII Rule 11 C.P.C. The applicability of the Code of Civil Procedure to the Consumer Court, as enshrined in Section 31(3) of the Consumer Protection Act of 2014, warrants thorough elucidation, which reads as follows:

“31 (3) For the purposes of this section, the Consumer Court shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters, namely:-

- (a) the summoning and enforcing attendance of any defendant or witness and examining him on oath;*
- (b) the discovery and production of any material object which may be produced as evidence.*
- (c) the receiving of evidence or affidavits;*

- (d) *issuing of any commission for the examination of any matter; or*
- (e) *any other matter which may be prescribed;”*

8. A plain reading of the aforementioned provision unambiguously indicates that the procedural powers vested in a Civil Court under the Code of Civil Procedure, 1908, are also vested in the Consumer Court. This inclusion is intended to ensure that the Consumer Court can efficaciously manage the adjudication process, including summoning and examining witnesses, handling evidence, and issuing requisite orders to ensure a fair trial.

9. Notwithstanding, Section 36 of the Act of 2014 endows the Consumer Court with the Authority to dismiss claims found to be frivolous or vexatious. It further empowers the Court to levy a fine of up-to ten thousand rupees on the claimant for willfully instituting a false claim and to award appropriate compensation to the defendant from the amount realized from such fine. Therefore, given the powers conferred under Section 36 of the Act of 2014, the Consumer Court should exercise its Authority under these specific provisions rather than invoking Order VII Rule 11 C.P.C. Nevertheless, the Consumer Court's action of rejecting the Complaint under Order VII Rule 11 CPC can be construed as effectively being a dismissal under Section 36 of the Act of 2014, read with Order VII Rule 11 CPC, adhering to the equitable principle that no person should suffer due to an act of the Court.

10. Reverting to the substantive merits of the case, it becomes imperative to meticulously construe and scrutinize the provisions of Section 29(1) to (4) of the Act of 2014 in order to ascertain the timeliness of the Complaint filed by the appellant. These provisions delineate the procedural prerequisites for instituting a claim before the Consumer Court. Accordingly, they are read as follows: -

“29(1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer if service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.

(2) The manufacturer or service provider shall within fifteen days of the receipts of the notice, reply, thereto.

(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section: (1) and provided proof that the notice was duly delivered but manufacturer or service provider has not responded thereto.

(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:

Provided that the Consumer court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time

as it may allow if it is satisfied that there was sufficient cause for not filing the Complaint within the specified period:

Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of service.”

11. A bare reading of the above provisions provides that Section 29(1) of the Act of 2014 imperatively mandates that a consumer who has incurred damage, or the Authority in other pertinent instances, must promulgate a written notice to the manufacturer or service provider. This notice must unequivocally demand the rectification of defects, provision of damages, or cessation of contraventions against the Act. This step is quintessential as it formally apprises the other party of the alleged deficiencies, thereby providing them with an opportunity for rectification. Section 29(2) mandates the manufacturer or service provider to proffer a response to this notice within a fifteen-day window post-receipt. This provision obligates the notified party to address the consumer's grievances with alacrity, thereby fostering the swift resolution of disputes extrajudicially. Section 29(3) stipulates that the Consumer Court shall entertain no claim unless the consumer or the Authority has duly issued a notice under subsection (1) and provided irrefutable proof of its delivery. Furthermore, it must be established that the manufacturer or service provider failed to respond. This clause constitutes a condition precedent, ensuring that the consumer or Authority has undertaken all requisite preliminary steps prior to judicial intervention, thereby streamlining the adjudicative process. Section 29(4) articulates that a claim must be instituted within thirty days subsequent to the arising of the cause of action. The Consumer Court retains the discretion to permit the filing of a claim beyond these thirty days, provided it is satisfied that sufficient cause exists for the delay. Nonetheless, this extension cannot surpass sixty days beyond the expiration of the warranty or guarantee period stipulated by the manufacturer or service provider, or if no such period is specified, one year from the date of purchase or service provision. This provision endeavours to balance the imperatives of timely justice with the recognition that exceptional circumstances may necessitate procedural flexibility.

12. In the present case, the chronology of events is that the appellant, on 06.04.2022, effectuated the booking of a vehicle ALSVIN 1.37L MT COMFORT and remitted the full consideration. The tentative delivery month was designated as July 2022. Despite the appellant's persistent entreaties, the vehicle remained undelivered. Subsequently, the appellant issued a legal notice on 15.08.2022, eliciting a response from the Respondents on 24.08.2022. The appellant proceeded to file the Complaint on 15.09.2022. It is prudent to interpret the term "cause of action" as accruing upon the Respondents' failure to adequately address the issues enumerated in the notice, specifically from the date of their

reply on 24.08.2022. Thus, the appellant's filing of the Complaint on 15.09.2022 falls squarely within the thirty days stipulated in Section 29(4) of the Act of 2014.

13. Accordingly, the Complaint is irrefutably timely under the statutory provisions. The Consumer Court's rejection of the Complaint on the grounds of being time-barred ostensibly constitutes a misinterpretation of the pertinent legal provisions.

14. While the Complaint filed by the appellant before the Consumer Court was indeed within the prescribed period, a critical inquiry arises from its content regarding whether it falls within the jurisdictional ambit of the Consumer Court. To address this query, it is imperative to reproduce the preamble of the Act of 2014, which states:

"Whereas, it is expedient to provide for protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith".

15. Upon a meticulous perusal of the preamble, it becomes unequivocally evident that the overarching purpose and objective of the Act of 2014 are to safeguard and advance the rights and interests of consumers who are susceptible to risks and failures in procuring their desired goods and services. The preamble aims to ensure the protection and promotion of consumer rights by establishing an expedited mechanism for the redressal of grievances, minimizing the loss of time in resolving such disputes. Though the preamble is not an operational part of the statute, it is a critical interpretative tool that elucidates the legislature's intent and the legislative purpose necessitating the enactment. It provides a gateway to understanding the goals the legislature sought to achieve through this law. Hence, the preamble holds a pivotal role in statutory interpretation, shedding light on the true purpose and intent of the legislation. The Supreme Court of Pakistan, in the case of *Director General, FIA and others¹*, reiterated this principle by asserting that while the preamble to a statute is not operative, it offers valuable guidance for discerning the legislature's purpose and intention. In that case, the reliance was also placed on the case of *Murree Brewery Company Limited v. Pakistan through the Secretary of Government of Pakistan and others (PLD 1972 SC-279)*, wherein it was held that a purposive approach should be adopted in interpreting a statute, aligned with its objectives and not contrary to them. Thus, in light of the above, it is incumbent upon the Court to interpret the provisions of the Act in a manner that upholds the intent and purpose outlined in its preamble, ensuring that the rights and interests of consumers are effectively protected and promoted.

¹Director General, FIA and others v. Kamran Iqbal and others (2016 SCMR 447)

16. To invoke the jurisdictional competence of the Consumer Court, the appellant must incontrovertibly satisfy the definitional criteria of a '**Consumer**' as enunciated under Section 2(e) of the Act of 2014, which stipulates: -

*“(e) "**Consumer**" means a person or entity who---*

(i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose; or

ii) hires any service for a consideration and includes any beneficiary of such services;

***Explanation:** For the purpose of sub-clause (i) "Commercial purpose" does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self-employed person.”*

17. An exegetical analysis of the aforesaid statutory provision elucidates that clause (i) of subsection 2(e) pertains to '**product**,' which is further delineated under Section 2(n) and is synonymous with the term '**goods**' as defined in the Sale of Goods Act, 1930. Conversely, clause (ii) of subsection (2)(e) pertains to '**services**,' as defined under Section 2(q) of the Act. The relevant section is as follows: -

“(q) "Services" includes the provision of any kind of facilities which encompasses all services such as communication, or advice or assistance such as the provision of medical, legal, or engineering services but does not include---

(i) the rendering of any service under a contract service;

(ii) a service, the essence of which is to deliver judgment by a Court of law or Arbitrator;”

18. A scrupulous exegesis of these statutory provisions reveals that, for a claim to be cognizable under Section 26 of the Act of 2014 before the Consumer Court, the claimant must incontrovertibly establish their status as a '**consumer**' who has incurred damage due to a defective product procured from a service provider. This entails that the claimant must have either purchased or leased any product for consideration or engaged in any services for consideration. The '**services**' delineated under Section 2(q) encompass the provision of facilities, advice, or assistance in the domains of medical, legal, or engineering services. However, Section 2(q)(i) imposes a statutory constraint, precluding claims pertaining to personal service contracts from being adjudicated before the Consumer Court.

19. It is apposite to read the relief sought by the appellant in his Complaint before the Consumer Court:

“A. That, this Honorable Court may be pleased to direct the defendants/company to deliver his booked car at the price shown in the company's price catalogue.

B. To award actual costs, including lawyer's fees incurred by the complainant, along with damages.”

[Emphasis supplied]

20. The relief sought by the appellant does not pertain to pecuniary damages suffered but rather constitutes a grievance regarding the Respondent's dereliction in delivering the booked vehicle. It is imperative to note that a consumer's claim for damages under Section 26 of the Act must meticulously align with the provisions of Section 29, which mandates that such a claim be predicated on damages incurred due to defective or faulty products obtained for consideration. The facts indicated that the appellant procured a vehicle from Respondent No.2 on 06.04.2022 and remitted the entire payment. The dispute arose when Respondent No.2 refused to deliver the vehicle, citing the non-payment of the residual balance. Crucially, booking a vehicle does not fall within the ambit of '**product**' as defined under Section 2(n), nor does it qualify as '**services**' under Section 2(q) of the Act. Consequently, this matter pertains exclusively to the contractual rights and obligations emanating from the sale/purchase of a vehicle and not to '**services**' as delineated by Section 2(q) of the Act. Therefore, the appellant should have sought recourse through a Civil Court of competent jurisdiction under the Specific Relief Act for the enforcement of contractual obligations if so advised, rather than approaching the Consumer Court, unless it is unequivocally established that he is a consumer who has purchased a defective or faulty product or engaged any service from a service provider.

21. Additionally, the Consumer Court egregiously overlooked the aforementioned legal position; however, by its very nature, any court bears an inherent duty to apply the correct law irrespective of whether the parties have specifically invoked it. In the seminal case of *Prince Ghulam Muhammad Khan*², the Supreme Court of Pakistan emphatically elucidated that it is the judiciary's duty to apply the correct law, regardless of whether a litigant has drawn attention to it. This principle accentuates the judiciary's paramount responsibility to ensure that justice is administered precisely and that the relevant legal provisions are applied judiciously. Further fortifying this duty, in the case of *Abdullah Khan*³, the Supreme Court of Pakistan articulated that it is incumbent upon the Court itself to apply the pertinent law. The Court elucidated that a party is not obligated to engage counsel and that the applicable law must be effectuated based on the admitted or proven facts, irrespective of whether it has been explicitly relied upon by a party. It is incumbent upon the Court to discern and apply the correct legal principles to the factual matrix, thereby ensuring that justice is both effectuated and perceived to be effectuated.

²Prince Ghulam Muhammad Khan v. Settlement and Rehabilitation Commissioner (1972 SCMR 359)

³Abdullah Khan v. Nisar Muhammad Khan (PLD 1965 SC 690)

22. Moreover, it is a well-entrenched judicial principle that incompetent complaints should be summarily dismissed at their inception to prevent the squander of judicial resources and to uphold the sanctity of the judicial process.

23. For the foregoing reasons, it is manifestly evident that the present matter pertains to a breach of contractual terms and conditions governing the sale and purchase of a vehicle. The Consumer Court lacks the requisite jurisdiction to entertain and adjudicate such claims. Consequently, this appeal is devoid of merit and is hereby **dismissed**. Nonetheless, the appellant retains the prerogative to seek redress for his grievance by approaching a court of competent jurisdiction.

JUDGE

Qazi Tahir PA/*